IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1143 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGDISHBHAI BHAGWANBHAI SOLANKI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR ASHISH M DAGLI for Appellant(s) : 1,
MS HANSA PUNANI,, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/12/2007

ORAL JUDGMENT

1. This appeal has been filed by the original accused challenging the judgement and order dated 14.8.2007 passed by learned Special Judge,

Fast Track Court No.1, Surendranagar in Special Electricity Case No. 63/2007.

2. As per charge exh.7, it was alleged against the appellant that on 24.1.2006 at about 11 O' clock, raiding party of Gujarat Electricity Board raided the field of the appellant at Sadla village. It was found that from the overhanging electricity line passing from near the field of the appellant, he had unauthorisedly taken temporary connection and drawn electric supply to run electric motor of 30 horse powers. With the help of such power supply, he was irrigating his field. He had by unauthorised use of electricity caused theft of electric supply to the tune of Rs.1,42,633/- and had thereby committed offence punishable under Section 135 of the Electricity Act, 2003.

3. Narsibhai Govindbhai Sarsavadiya-PW1 was examined at exh.10. He was the Deputy Engineer engaged by Paschim Gujarat Vij Corporation ltd. At the relevant time, he was discharging his duties in Surendranagar city, division no.1. In his deposition, he stated that on 24.1.2006, he received instructions from the head office to carry out checking in Muli subdivision. He along with Junior Engineer D.A. Chaudhary, Line man K.V. Dave and Helper A.U. Adhara went to Sadla village in Muli taluka. They carried out the inspection in the field of the appellant. The

appellant at that time was not present. His partner however, was present. He refused to disclose his name. Upon checking it was found that though the appellant was not given electricity connection by the Company, he had taken illegal connection with the help of 30 mtr. long wire connected to L.T. Line. He was running two motors of 15 horse powers each. It was found that with the help of hooks attached to the wire, his motor starter which are located in the house were connected to the electric supply. These starters were connected to two submersible pump of 15 horse powers each. Witness therefore, prepared a checking sheet which contained his signatures and signatures of D.A. Chaudhary, K.V. Dave and A.U. Adhara.

3.1 In the cross examination, he stated that the checking was carried out regarding the agricultural power supply. He admitted that such power supply is continued only for sometime and for rest of the time the same gets disconnected. He stated that at 11 O' clock when the checking took place, power supply was on. He further admitted that to show that on 24.1.2006 at 11 O' clock the electricity supply was on, he has no evidence from the substation.

3.2 Significantly, he admitted that to show that field which was checked is of the ownership or occupation of the appellant, he had not

collected any evidence. He admitted that he had not noted the details of the fields situated on four corners of the field which was checked.

4. The said witness produced Rojkam exh.12. In the Rojkam, it is recorded that raiding party had gone to the field of Jagdishbhai Bhagwanbhai (i.e. the appellant) and it was found that temporary unauthorised connection was taken from the overhanging electricity line. It was recorded that yellow coloured wire used for such connection was seized. The starter and panel board was also seized along with volt meter, ampere meter and three fuses.

5. Bharatbhai Manubhai Patel-PW2 was examined at exh.14. He was the complainant who had lodged the complaint against the appellant. He was however not a member of the raiding party. In his cross examination, therefore, he admitted that about the actual incident, he had no personal knowledge. He also admitted that he had not seen the place of incident nor had he gone there at any time. He admitted that except for lodging the complaint, he has not taken any other part in the incident.

6. Ketansinh Harubha Jhala-PW3 was examined at exh.16. He was the police officer who carried out the investigation. He stated that he had recorded the statement of Narsibhai

Govindbhai(examined as PW1) and Hirabhai Ukabhai(not examined before the Court).

6.1 In the cross examination, he admitted that he had not taken the statement of D.A. Chaudhary and K.V. Dave. He admitted that no Muddamal articles were seized by him. He had not seen the place which was raided. Significantly, he admitted that he had not collected any evidence regarding the ownership of the appellant. He had not collected any evidence to verify whether at the time of raid, the electricity supply was on or not. He admitted that the case pertained to Kalmad feeder.

7. It was the case of the appellant that at about 11 O' clock on 24.1.2006, there was no electricity supply in village Sadla. He examined one Dineshkumar Bipinbhai Gamit-DW1 at exh.19. He was Junior Engineer in the Electricity Company. He had brought along with him the record showing the availability of electricity supply in Kalmad feeder on 24.1.2006. From the record, he could say that on the said date electricity supply was available in Kalmad feeder from 16 hours to 24 hours.

7.1 In his cross examination, however, he could not say as to from which feeder, electricity supply is available to Sadla village. He could not say whether at the time of

checking carried out in the village of the appellant, electricity supply was there or not.

8. On the basis of above evidence, learned advocates have made submission before me.

9. Learned advocate Shri Ashish Dagli for the appellant submitted that there was gross delay in filing of the complaint. The alleged incident took place on 24.1.2006 and the complaint was filed only on 25.3.2006 and actually recorded on 18.5.2006. It was contended that this delay is not explained. It was next contended that there was no material on record to establish that field in question was of the occupation or ownership of the appellant. It was contended that the complainant had no authority to lodge the complaint. In absence of any authorisation, learned Judge could not have taken cognizance of the alleged offence. Reliance was placed in this regard on Section 151 of the Electricity Act, 2003 and on the following decisions :

1) **Biswanath Patra v. Divisional Engineer(E) S & LP & Anr.** reported in AIR 2007 Calcutta 189.

2) **M/s. Mahalakshmi Spinners Ltd. & Ors. v. State of Haryana and Anr.** reported in 2007 Cri.L.J. 429.

9.1 It was contended that though

electricity wires and other implements were seized, the same were not produced before the Court. It was contended that the appellant had succeeded in establishing that on the date of incident at 11 O' clock in the morning, there was no power supply in the area.

10. Learned APP Ms. Hansa Punani on the other side opposed the appeal and submitted that the prosecution had succeeded in establishing the case against the appellant. She submitted that there is presumption of the consumption being fraudulent, available under Section 135 of the Electricity Act, 2003.

11. Having heard learned advocates appearing for the parties, I find that the prosecution had not succeeded in connecting the appellant with the commission of offence. There was no evidence on record to establish that the unauthorised consumption of electricity was done by or at the instance of the appellant. PW1 stated that when the inspection was carried out, the appellant was not present. This is somewhat in contrast to the statement made in the Rojkam exh.12 wherein it was recorded that the appellant was present, however, upon seeing the raiding party, he left the field. Be that as it may, it is the deposition of PW1 before the Court which would form part of substantive evidence. Thus presence of appellant at the scene of incident is

admittedly not established.

12. Additionally, I also find that there is no evidence whatsoever to hold that the unauthorised consumption of electricity was being carried out on the agricultural land owned or occupied by the appellant. PW1 in his cross examination clearly stated that he had not collected any evidence to show that field which was being checked was of the possession or ownership of the appellant. The Investigating Officer Ketansinh-PW3 also clearly stated that he had not collected any evidence to show that field was of the ownership of the appellant. He stated that he had never visited the field. He had not recorded the statement of D.A. Chaudhary or K.V. Dave. He had not collected any evidence to show that at the time of raid, electricity supply was on.

13. From the available material on record, it can be clearly seen that it was a case of half-hearted investigation and prosecution. Though easily available, no evidence was collected to establish that the field on which two tube wells were situated and which tube wells were being operated with the help of submersible pumps connected through excessive paraphernalia such as panel power, ampere meter with volt meter etc. were situated in the field of ownership of occupation of the appellant.

14. In absence of any such evidence, it would be difficult to hold that the appellant was instrumental in unauthorised consumption of electricity and had thereby committed theft of electricity and thus committed offence punishable under Section 135 of the Electricity Act, 2003.

15. Other than PW1, there was no other eyewitness who could have thrown any light on the incident. One may recall that Bharatbhai-PW2 had only lodged the complaint. He had admitted that he had no personal knowledge about the incident. Ketansinh-PW3 was the Investigating Officer who had not even visited the site during his investigation. Thus the prosecution, fell short of connecting the appellant with the incident of theft of electricity. His conviction under Section 135 of the Electricity Act, 2003 was therefore, not justified.

16. I am unable to uphold the contention of learned APP Ms. Hansa Punani that in facts of the present case, presumption under Section 135 of the Electricity Act, 2003 would arise. Section 135 of the Electricity Act, 2003 makes any dishonest tapping, tampering, damaging, etc. of the electricity connection so as to abstract or consume or use electricity, punishable with imprisonment or fine. Further proviso to Section

135 states that “provided further that if it is proved that any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.”

17. Term consumer has been defined under Sub-section(15) of Section 2 of the Electricity Act, 2003 which reads as follows :

“15. “consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.”

18. From the definition of word “consumer”, it can be seen that same is inclusive in nature and besides any person who is supplied with electricity for his own use by a licensee or the Government, also includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee or the Government etc.

19. In the present case, if it is shown that the appellant had connected his premises for the purpose of receiving electricity with the works of Electricity Company, he would be covered under the term consumer as defined under Sub-section(15) of Section 2 of the Electricity Act, 2003.

20. In such a case any unauthorised consumption or use of electricity would give rise to rebutable presumption that such abstraction, consumption or use was dishonestly caused by such consumer. For the purpose of such presumption however, first and foremost thing required is that prosecution establishes that there has been abstraction, consumption or use of electricity by any artificial means or means not authorised by the Board or licensee. To avail of such presumption, prosecution has to establish such abstraction, consumption or use of electricity by the consumer. If this is proved, the presumption that such use, abstraction or consumption was dishonestly caused by the consumer would arise. This is so because proviso starts with words “if it is proved”. The arising of the presumption therefore, necessarily depends on prosecution proving the existence of artificial means or means not authorised by the Board or licensee for the abstraction, consumption or use of electricity

by the consumer.

21. In the present case, I find that very foundation of connecting the appellant with the unauthorised connection of electricity is missing. The presumption under further proviso of sub-section(1) of Section 135 would not be available.

22. Insofar as question of authorisation to lodge the complaint is concerned, no such question was raised before the trial Court by the appellant. In fact to the complainant PW-2 also it was only suggested that he has no authorisation to lodge the complaint against the appellant by name. No suggestion was put to the witness that he had no authorisation at all. The question of authorisation being one of fact, therefore, need not be gone into in this appeal especially when I find that otherwise also the prosecution failed to prove the charge.

23. Insofar as question of electricity supply being available at Sadla village at 11 O' clock on 24.1.2006 is concerned, in my view, same is wholly redundant. Witnesses have stated that electric motors were found operating. There is no counter evidence to show that no supply was available at that relevant time. DW1 only stated that through Kalmad feeder, electricity was supplied between 16 hours to 24 hours on

26.1.2006. He however, could not say whether at Sadla village, electricity supply was received through which feeder.

24. Additionally, I also find that even if there was no electricity supply at the time when raiding party had raided the field of the appellant, in view of further proviso under sub-section(1) of section 135 of the Electricity Act, 2003, presumption could arise that there was abstraction, consumption or use of electricity caused by consumer dishonestly. Significantly, such provision as discussed earlier, requires prosecution to prove that there is any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer. In the present case, raiding party found overhanging wires connected to the panel board which in turn was connected to submersible motor pumps. If this fact was established, presumption that same was meant for dishonest consumption of electricity would straightway arise. Even if at the point of time when raid was carried out, electricity supply was discontinued, same would not absolve the accused from the offence punishable under Section 135 of the Electricity Act, 2003. In the present case, however, I find that prosecution collected no evidence to show that the field on which such unauthorised use was being carried

out was of ownership or occupation of the appellant. Independently, also there was no evidence to show that the appellant was responsible for such unauthorised consumption of electricity.

25. In the result, conviction of the appellant is found illegal. Same is set aside. The appellant is acquitted of the charge. The appeal succeeds and disposed of accordingly. Bail bond stands cancelled.

(Akil Kureshi,J.)

(raghu)